Filed 3/1/19 C.S. v. G.A. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

C.S., Appellant, v. G.A., Respondent.	B282013 (Los Angeles County Super. Ct. No. BD611083)

APPEAL from orders of the Superior Court of Los Angeles County, Tamara Hall, Judge. Affirmed.

C.S., in pro. per., for Appellant.

No appearance for Respondent.

* * * * * * * * * *

C.S. (mother) appeals from the trial court's orders giving G.A. (father) custody of their four-year-old daughter, M.S., and issuing a domestic violence restraining order against mother. We affirm.

BACKGROUND

Mother designated a very limited record on appeal, consisting of father's November 22, 2016 request for temporary emergency custody and visitation orders, as well a change of the court's previous custody and visitation orders, mother's responsive declaration, a supplemental declaration from mother, father's request for a temporary restraining order, and mother's response to father's request for a temporary restraining order, as well as the minute orders relating to the orders requested by father. The case summary tells us that this case originated in November 2014, with the filing of a juvenile court custody order.

In his November 22, 2016 request for orders, father sought to modify previous custody orders. Father requested sole legal and physical custody of M.S., an order that mother's visitation with M.S. be supervised, and other orders. In his declaration in support of the requested orders, father testified that M.S. suffered "massive scrapes [and] cuts[,] dog bites [and was exposed to] yelling, screaming, arguments" while in mother's care.

Mother filed a responsive declaration, denying the allegations in father's request for an order.

That same day, the court reviewed father's application in chambers, and granted father sole physical and legal custody, with visitation to mother, finding that exigent circumstances existed pursuant to Family Code section 3064. The court set the matter for further hearing on December 14, 2016. Both mother

and father were present, without counsel, and were served with copies of the court's order at the hearing.

In anticipation of the December 14, 2016 hearing, mother filed a supplemental declaration which included numerous exhibits, denying father's allegations.

On December 12, 2016, father filed a request for a temporary restraining order against mother. The court issued a temporary restraining order, and set the matter for further hearing for January 2017. The December 14, 2016 hearing was later taken off calendar.

At the January 2017 hearing, the court granted father's request for a restraining order for a period of three years, and made the following orders: that mother complete a psychological evaluation, that mother's visitation be monitored, and that mother complete domestic violence, parenting, and anger management classes before seeking modification of the court's order.

On March 6, 2017, the court entered an order clarifying its January order, and specifying that the parties were to use a professional monitoring facility at mother's expense, and that all other requests for relief in father's November 22, 2016 request and mother's responsive declaration were denied.

Mother filed a notice of appeal on March 23, 2017, appealing from the "11/22/16, 01/25/17, 03/06/17" orders. Mother's notice designating the record on appeal sought to include "all exhibits" as well as reporter's transcripts. However, mother failed to pay for the transcripts, or file a Transcript Reimbursement Fund application (Cal. Rules of Court, rule 8.130(b)(3)(B)). Therefore, no reporter's transcript of any proceedings appears in the record on appeal. No exhibits were

lodged by the court. It appears the exhibits were returned to the parties at the January 2017 hearing.

DISCUSSION

1. Appealability

As an initial matter, we must determine whether the orders challenged on appeal are appealable, and whether the appeal is timely. According to her notice of appeal, which was filed on March 23, 2017, mother appeals from the orders of November 22, 2016, granting father custody on an ex parte basis; the January 25, 2017 order granting father's request for a restraining order; and the March 6, 2017 order modifying the restraining order.

Orders modifying final custody judgments are appealable as orders made after a final judgment. (*Enrique M. v. Angelina V.* (2004) 121 Cal.App.4th 1371, 1377-1378; see also Code Civ. Proc., § 904.1, subd. (a)(2).) Also, orders granting temporary and permanent restraining orders are separately appealable. (*Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th 640, 645; *McLellan v. McLellan* (1972) 23 Cal.App.3d 343, 357; see also § 904.1, subd. (a)(6).) Therefore, we conclude the orders are appealable.

However, mother's appeal of the November 22, 2016 order is not timely. Generally, an appeal must be taken within 60 days of a party receiving notice of entry of the judgment or order appealed from, or if no notice is given, within 180 days of entry of the judgment or order. (Cal. Rules of Court, rule 8.104(a), (c).) The filing of a timely notice of appeal is jurisdictional. If a notice of appeal is filed late, the court must dismiss the appeal. (*Bourhis v. Lord* (2013) 56 Cal.4th 320, 324-325.)

Mother received notice of entry of the trial court's November 22, 2016 order awarding father sole legal and physical custody that same day, but her notice of appeal was filed more than 60 days following notice of this order. Because this was a separately appealable postjudgment order, mother's failure to timely appeal this order means she cannot challenge it on appeal. (See, e.g., *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1520.) We have no power to excuse or remedy the late filing of the notice of appeal. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1094 ["An untimely notice of appeal is 'wholly ineffectual: The delay cannot be waived, it cannot be cured by nunc pro tunc order, and the appellate court has no power to give relief, but must dismiss the appeal on motion or on its own motion.' "].)

2. Merits

Regarding mother's challenges to the court's January 25 and March 6, 2017 orders, mother contends the judge was biased, and that mother saw the court clerk permit father to stay in the courtroom after it was locked for the lunch break so that copies of his documents could be made for the court. Mother contends the court admitted into evidence a document that was never identified to her or her counsel.

Mother has not provided us with a sufficient record to demonstrate prejudicial error. The January 25 and March 6 proceedings were reported, but mother has not provided us with a reporter's transcript. We cannot know what, if any, objections were made by mother, or the nature of the "document" so that prejudice can be assessed.

"[I]t is settled that: 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent,

and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is the appellant's burden on appeal to produce a record " 'which overcomes the presumption of validity favoring [the] judgment.' " (*Webman v. Little Co. of Mary Hospital* (1995) 39 Cal.App.4th 592, 595.) " 'Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].' " (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 188.)

Mother has only provided us with portions of the clerk's transcript. In the absence of a reporter's transcript or suitable equivalent, we must " 'conclusively presume' " that the evidence in the clerk's transcript is " 'ample to sustain the findings.' " (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 522.)

Moreover, mother has not provided us with any citations to authority, or reasoned analysis, supporting her claims of error. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) For these reasons, and because mother has not provided us with a sufficient record to overcome the presumption that the trial court's ruling was correct, we affirm.

DISPOSITION

The orders are affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J. RUBIN, J.*

---

* Presiding Justice of the Court of Appeal, Second Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution